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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,935	12/12/2001	Raymond Gerard St. Louis	KCC-16,727	2923

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PAULEY PETERSEN KINNE & ERICKSON
2800 WEST HIGGINS ROAD
SUITE 365
HOFFMAN ESTATES, IL 60195

EXAMINER	
REICHLE, KARIN M	

ART UNIT	PAPER NUMBER
3761	13

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No.	Applicant(s)	
	10/015,935	LOUIS ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- Th MAILING DATE of this communication appears on the cover sh et with the correspondenc address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 38-54* is/are pending in the application.

4a) Of the above claim(s) *3-5, 7,40 and 46-54* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,6,8-13,38,39 and 41-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *3-5-02 & 12-22-03* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11-12*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on 3-5-02 and 12-22-03. These drawings are approved by the Examiner.

Claims

2. Claims 13 and 38 would be in better form if "abuts each waist end edge" on the last line thereof were amended as --of each of the at least front side panels or at least back side panels abuts the waist end edge of the associated side panel--.

Claim Language Interpretation

3. For purposes of the prior art rejections, referring to the instant specification by page and line: The claim language "elastic" is defined as set forth at page 8, lines 10-12. "Garment", "personal care garment" and "protective garment" are defined as set forth on page 16, lines 2-9. "In the vicinity of the garment openings", "aligned with the garment opening or edge" and "abutting a garment opening or edge" are defined as set forth at page 16, lines 10-20. "Targeted elastic regions" "targeted elastic zones", "targeted elastic material", "targeted elastic laminate" are defined as set forth at page 9, lines 4 et seq, i.e. the elastic regions are made in the same process as is the elastic material or laminate made therefrom, i.e. separate manufacture of an elastic band and subsequent connection thereof to the underlying material to form the elastic material or laminate is not included. See also page 2, last paragraph, page 4, lines 7-11, page 26, lines 19-22 and page 53, lines 8-14. "Low or lower tension zone", "High or higher tension zone"

and "spacer zone" are defined as set forth on page 10, line 19- page 11, line 3, page 11, lines 7-12 and 19-20. It is noted that the terminology "absorbent composite structure", and "side panels is permanently bonded to and extends beyond...composite structure" have not been specifically defined by the Applicants, i.e. on pages 8-16, and thus will be given their broadest customary interpretation, i.e. the dictionary definition, in light of the specification. As set forth on page 18, lines 3-9 and page 22, lines 9-12 of the specification and now the claims, the absorbent composite is the cover, liner and absorbent, the side panels may be separate pieces attached to the composite or integrally formed therewith, i.e. an extension of a component of the composite structure. Therefore, in light of the specification, claims and the dictionary definition of "composite", i.e. "made up of distinct components; compound", the terminology "absorbent composite" is defined as the absorbent, liner and cover where coextensive and the "linear side edge of the absorbent composite structure" being where the absorbent, cover and liner and layer are all no longer coextensive. The terminology "attached" and "permanently bonded" are defined as being direct or indirect permanent bonding or attaching of separate elements to form a unitary structure or direct or indirect permanent bonding or attaching so as to form a monolithic structure. See also the response to Arguments section infra.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-2, 6, 8-13, 38-39, and 41-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Gompel et al., EP '052.

Claims 1-2, 6, and 38-39: See paragraph 3, supra, Figures, abstract, col. 1, lines 3-5, 19-20, 27-30, 34-49, 55 et seq, col. 2, lines 10-14 and 42-43, col. 4, lines 14-16, 18-22, 33-39, col. 5, line 43- col. 6, line 51, col. 6, line 56-col. 7, line 54, col. 8, lines 18-25, col. 8, line 51-col. 9, line 24(and thereby col. 3, line 66-col. 4, line 11, col. 4, line 31-col. 5, line 37, col. 8, lines 7-39, col. 9, lines 27-52 of '464), and claims, i.e. the chassis is 2, the absorbent composite is 32, 52, and 34 where coextensive, also see Figures 6-7 which show such composite having linear side edges, the side panels which are at least portions 10 of element 20 are attached and permanently bonded to the composite and extend transversely beyond the side edges of the composite, the leg openings are 16, the waist opening is 12, the targeted elastic material are the stretchable portions of 10 and the tension zones are disclosed at col. 7, lines 16-31 and col. 5, line 43-col.7, line 15. For example, if the gradient is increases from the waist to the leg a highest zone is adjacent the leg, a second highest zone is adjacent the highest zone and aligned with the waist opening and a third highest zone is adjacent the second and so on and thereby, there is a high zone aligned with each leg opening, e.g. the first, a high tension zone aligned with the waist opening, e.g. the second, a low zone, e.g. the third zone, and a spacer or second low tension zone, e.g. the fourth zone or the zone adjacent the waist. It is noted that the claims do not require the high zones to be equal and only require a low zone to be lower than a high zone. The claims do not set forth how the zones, other than the spacer zone and the high zone aligned with the waist, are positioned with regard to the other zones. For a second example, if the zones are created by bands, e.g., see Figures 2 and 5, the areas between 14, 18 and 44 have no or lower elasticity or stretchability than those areas with such bands. Also see the gradients can be high-low-high. Therefore, the '052 reference teaches the claimed zones. Also, as best understood of the instant specification, see paragraph 3 supra, especially lines 5-9 thereof, and the manufacturing processes of Figures 9-12

and 16, at the very least the TEM of the device is set forth at col. 7, lines 32-54, i.e. material or laminate made elastic by applying heat to inner layer 26 of laminate 26 and 28 or by the thermal bonding process of 36, 48 which also makes the laminate of 36, 48 elastic so is part of the single manufacturing process of making the zoned elastic material, i.e. the elastic or stretchable portions, e.g. 36, in the side panels 10 are the target elastic material and such panels are permanently bonded or attached to the composite and extend transversely beyond the linear side edges of the composite. It is noted that the claims do not require the panels extend from the side edges of the outermost layer of the garment which also forms the cover of the composite. With regard to claims 8-9, and 41-43, see col. 9, lines 18-24 and col. 1, lines 27-30(and thereby the dimensions set forth at col. 3, line 66-col. 4, line 11, col. 4, line 31-col. 5, line 37, col. 8, lines 7-39, col. 9, lines 27-52 of '464), i.e. the length ranges and filament shapes as claimed are taught by '052. With regard to claims 10, 12, and 44-45, see col. 6, lines 13-51 of '052. With regard to claim 11, see col. 8, line 51-col. 9, line 10. With regard to claim 13, see portions of '052 cited supra, e.g., Figures 2 and 5.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-2, 6, 8-13, 38-39, and 41-45 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19, 21, 50-59 of copending Application No. 09/855,188 in view of Van Gompel '052 and Bunnelle et al, '123. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the instant application was filed after the '188 application the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the claims of the other application? The answer is yes. Note the definitions in the other application, i.e. "Disposable garment", "TEL" and "TEM", the definitions in the instant application, and claim language in both applications. The instant claims include 1) the TEM being in the side panel so as to have the one high tension zone aligned with both the leg and waist openings, a low tension zone and a spacer zone between the waist end edge and the high tension zone aligned with the waist opening which specific gradient is in a side panel, a single manufacturing process and first and second basis weights which are not required by the claims of the other application, and the instant claims do not require 2) the specifics of claims 2-19, 51, 56 and 59 of the other application. With regard to 1), see cited portions of Van Gompel supra. To employ the claimed tension gradient in the laminate and the laminate in the side panel as taught by Van Gompel and

as claimed in the instant application in the device as claimed in the other application claims would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would provide improved fit and the desirability of good fit in any garment to be worn and especially an absorbent garment, i.e. don't want it to leak. Also see Bunnelle et al, col. 11, lines 3- 61, i.e. an elastic can be directly contacted with a substrate or can be stored and attached to the substrate later, i.e. a single manufacturing process or a non single manufacturing process. Therefore to make the manufacturing process a single process, if not already, would be obvious to one of ordinary skill in the art in view of the recognition of the interchangeability as taught by Bunnelle et al. With regard to the basis weights, see col. 6, lines 13-51 of '052. With regard to 2), the claims of the instant application are broader with regard to those claims of the other application, i.e. they claim more specific embodiments, and once the applicant receives a patent for a more specific embodiment he is not entitled to a patent for a broader or generic invention. This is because the specific anticipates the broader, see In re Goodman, supra.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-2, 6, 8-13, 38-39, and 41-45 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 and 49-58 of copending Application No. 09/855,189 in view of Van Gompel and Bunnelle et al, '123. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the instant application was filed after the '189 application the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the claims of the other application? The answer is yes. Note the definitions in the other application, i.e. "Disposable garment", "TEL" and "TEM", the definitions in the instant application and claim

language in both applications. The instant claims include 1) the TEM being in the side panel so as to have the one high tension zone aligned with both the leg and waist openings, a low tension zone and a spacer zone between the waist end edge and the high tension zone aligned with the waist opening which specific gradient is in a side panel, a single manufacturing process, and a first and second polymer compositions which are not required by the claims of the other application and the instant claims do not require 2) the specifics of claims 2-17, 18-23, 50, 55 and 58 of the other application. With regard to 1), see cited portions of Van Gompel supra. To employ the claimed tension gradient in the laminate and the laminate in the side panel as taught by Van Gompel and as claimed in the instant application in the device as claimed in the other application claims would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would provide improved fit and the desirability of good fit in any garment to be worn and especially a absorbent garment, i.e. don't want it to leak. Also see Bunnelle et al, col. 11, lines 3- 61, i.e. an elastic can be directly contacted with a substrate or can be stored and attached to the substrate later, i.e. a single manufacturing process or a non single manufacturing process. Therefore to make the manufacturing process a single process, if not already, would be obvious to one of ordinary skill in the art in view of the recognition of the interchangeability as taught by Bunnelle et al. With regard to the composition see col. 6, lines 13-51 of '052. With regard to 2), the claims of the instant application are broader with regard to those claims of the other application, i.e. those claims claim more specific embodiments, and once the applicant receives a patent for a more specific embodiment he is not entitled to a patent for a broader or generic invention. This is because the specific anticipates the broader, see In re Goodman, supra.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

9. Applicant's remarks with regard to matters of form have been considered but are deemed moot in that the issues discussed have not been reraised. Applicant's remarks with regard to Van Gompel have been considered but such remarks are considered not persuasive because such remarks are narrower than the claim language and description, i.e. definitions. For example, the claims do not require the panels to extend transversely beyond the linear side edge of the outer cover of the garment, i.e. the claim language requires the side edge of the composite which is a absorbent, liner and outer cover where coextensive. The claim language, as interpreted in light of specific definitions and common meaning of terms, clearly includes panels which are integrally formed, i.e. a permanent bond, with a layer of the composite, i.e. an extension of such layer, but extend beyond the composite which composite is the coextensive cover, liner and absorbent. Van Gompel includes the claimed structure. The claims do not require the panels to be discrete pieces from or non-monolithically formed with all the layers of the composite. The claims only require a TEM in at least each of the front or back panels (the entire panel(s) or entire garment are not required to be TEM) and an "elastic" band is not separately manufactured and subsequently connected to the underlying material in Van Gompel but rather the laminate or material which is made of nonelastic materials is elasticized in the same process as making the elastic laminate or combination. It is noted that the methods as set forth in Figures 9-12 and 16 illustrate laminates in which the elastic material is formed and

laminated in a single manufacturing line but the elastic material is actually formed in the line prior to it being attached or connected to an underlying layer. Furthermore, these methods do not show that laminate or TEM being associated or combined with the remainder of the garment, e.g. the liner, the absorbent assembly, the panels, in the same manufacturing line, i.e. as best understood, the TEM is made in a single process, not necessarily the entire panel or garment. See again page 53, lines 8-14 of the specification. The definitions do not require a TEM not to have separate "elastic" per se, the definitions only require the TEM be made in a single process. Note also again page 4, lines 7-11 of the specification, i.e. the TEM does not require non-separate elastic or a homogenous appearance, the claims such as 10 and 12, i.e. filaments of elastic, i.e. separate "elastic" per se, and the processes of Figures 9-12 and 16, i.e. separate "elastic" per se is formed prior to lamination to the underlying material to form the TEM. Applicants remarks with respect to the provisional double rejections have been noted but are deemed not persuasive since this is not the only rejection remaining nor has a terminal disclaimer been submitted.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that even if panels were claimed that extend transversely outward beyond linear edges of an outermost layer of a composite of a garment Bridges '430 already made of record as well as Popp teach that elasticized side panels can be monolithically formed or integral. The Mishima et al patent shows panels with zones of elastic adhesive. The Hilston et al

reference shows a film of elastic zones. Bunnelle et al '123 and Mleziva et al '024, already of record, also teach making elastic laminates in a single process.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the language added to claims 1 and 38.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K. M. Reichle

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
February 25, 2004